

EXHIBIT 27

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

4 IN RE: NATIONAL)
PRESCRIPTION) MDL No. 2804
OPIATE LITIGATION)
5 _____) Case No.
) 1:17-MD-2804
6)
7 THIS DOCUMENT RELATES) Hon. Dan A.
TO: Case Track 8) Polster

TUESDAY, NOVEMBER 15, 2022

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

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5 Today's date is November 15,
6 2022, and the time is approximately
7 10:19 a.m. Eastern.

This remote video deposition is
being held in the matter of the
National Prescription Opiate
Litigation, MDL number 2804, US
District Court, for the Northern
District of Ohio, Eastern Division,
and the deponent today is Jillanne
Smith.

16 All parties to this deposition
17 are appearing remotely and have agreed
18 to the witness being sworn in
19 remotely.

20 Due to the nature of remote
21 reporting, please pause briefly before
22 speaking to ensure all parties are
23 heard completely.

1 The court reporter today is
2 Carrie Campbell, and she will now
3 please swear in the witness.

4

5 JILLANNE SMITH,
6 of lawful age, having been first duly sworn
7 to tell the truth, the whole truth and
8 nothing but the truth, deposes and says on
9 behalf of the Plaintiffs, as follows:

10

11 DIRECT EXAMINATION

12 QUESTIONS BY MS. FITZPATRICK:

13 Q. Ms. Smith, good morning. My
14 name is Laura Fitzpatrick, and we met for the
15 first time just briefly a few minutes
16 remotely here via this Zoom link, right?

17 A. Correct.

18 Q. Okay.

19 A. Good morning.

20 Q. Good morning.

21 How are you doing this morning,
22 ma'am?

23 A. I'm doing good.

24 Q. Okay. Ma'am, today -- well,
25 first let's -- let me get you to go ahead,

1 please, and state your name for the record,
2 please.

3 A. Jillanne Smith.

4 Q. And, ma'am, where do you
5 currently live?

6 A. I live in Lakeland, Florida.

7 Q. And have you lived there your
8 whole life, ma'am?

9 A. No, I did not live here my
10 whole life.

11 Q. All right. Where did you live
12 before you lived in Lakeland?

13 A. I lived in St. Petersburg, and
14 Tampa previous to that.

15 Q. And previous to Tampa?

16 A. I lived in Pennsylvania.

17 Q. Okay.

18 A. You're going way back now.

19 Q. All right. Are we to the point
20 yet -- have we gotten to where you were born
21 yet?

22 A. No.

23 Q. Okay. So before Pennsylvania?

24 A. New Hampshire.

25 Q. Okay. Before that?

1 manager, pharmacy compliance and regulatory
2 affairs.

3 Right?

4 MR. LARSON: Object to form.

5 Go ahead, Jillanne.

6 THE WITNESS: I was promoted
7 into the role.

8 QUESTIONS BY MS. FITZPATRICK:

9 Q. Okay. And so at least as of
10 the time that you're being evaluated here,
11 which is the -- April to March of 2019, as of
12 March of 2019, you're in that -- what we keep
13 calling the new role, which was the senior
14 manager of pharmacy compliance and regulatory
15 affairs, right? That's what it says here?

16 A. Correct.

17 Q. Okay. All right. Now, they've
18 got all kind of stuff in this document, if we
19 can zoom back out, and if I have time, we'll
20 get back to some of it. But it's got focus
21 areas, right? You see SOM; we're going to
22 talk about that. Centralized compliance;
23 we're going to talk about that a lot today.
24 Policy and procedures; we're going to talk
25 about that a lot today. Training; we're

1 going to talk about that a lot today.

2 And then look at the bottom.

3 It says "Opiate legislation."

4 What was the opiate legislation
5 that was a focus area for you in this time
6 period?

7 MR. LARSON: Object to form.

8 Go ahead, Jillanne.

9 THE WITNESS: I'm -- I don't
10 remember specifically, but it would --
11 it would have been opiate regulations,
12 most likely. But I don't -- I don't
13 remember specifically this evaluation.

14 QUESTIONS BY MS. FITZPATRICK:

15 Q. Were these new regulations or
16 existing regulations?

17 A. I'm unsure. I don't -- I don't
18 recall there being new legislation at that
19 time when I was getting evaluated, so I'm
20 unsure.

21 Q. Do you recall who was
22 evaluating you at this time, who would have
23 been your superior at the time?

24 A. I think it would have been
25 Dain.

1 Q. And that's Dain Rusk, right?

2 And the --

3 A. Dain Rusk.

4 Q. And the jury may or may not
5 have heard about Mr. Rusk at the time they
6 hear this testimony. But tell the jury,
7 please, Mr. Rusk's title at Publix.

8 A. VP, pharmacy operations.

9 Q. All right. And that was a role
10 that was previously held by Mr. Fred
11 Ottolino, right?

12 A. That's correct.

13 Q. Okay. And that's as high as it
14 gets in the food chain when it comes to
15 Publix pharmacies, right, that position, VP
16 of pharmacy?

17 A. Yes, they -- Dain reported to
18 the CFO. He's reported to others higher up,
19 but that is the top of the pharmacy.

20 Q. CFO of the whole company. And
21 CFO, that stands for chief financial officer,
22 right?

23 A. Correct.

24 Q. All right. And who was the
25 CFO, if you recall, at -- during this time

1 period, 2018, 2019?

2 A. David Phillips.

3 Q. And is Mr. Phillips still the
4 CFO of Publix?

5 A. He is, as far as I know.

6 Q. And was he the CFO of Publix
7 when you were reported to Mr. Ottolino?

8 A. Yes.

9 Q. For the whole time? Or do you
10 recall when he came CFO?

11 A. I would venture to say yes, but
12 it was -- it's a long time ago, so I don't --
13 I don't remember.

14 Q. Now, given that Mr. Rusk is who
15 was -- would have been reviewing you here,
16 and we'll take a look to confirm that a
17 little bit later on in this document, but
18 would he be the one that might know a bit
19 more about what the opiate legislation here
20 that you-all -- that was a focus area for you
21 and that you were being reviewed on?

22 A. Dain Rusk? Is that your
23 question?

24 Q. Yes, ma'am.

25 A. Yes.

1 Q. Okay. So we'll have to talk to
2 Mr. Rusk about that.

3 Now, it's got some -- under
4 strategic objectives, you see it's got this
5 like L5, L4, P6, right? Those are some
6 rating numbers, right?

7 A. No.

8 Q. What are those?

9 A. Those tie to a strategic
10 dashboard.

11 Q. And who comes up with that
12 strategic dashboard? Because I've been
13 unable to find it.

14 Is it a strategic dashboard
15 that's been in place with Publix for as long
16 as you were there?

17 A. Not -- is strategic -- so your
18 first question, who, it would be a
19 cross-functional team.

20 Your second question, has it
21 been in place the entire time I was there, I
22 don't recall when it initially came in place.
23 Definitely within the 25-plus years, but I
24 don't remember when.

25 Q. Like, for example, in training,

1 that L3, you don't happen to remember what
2 the L3 means, do you?

3 A. I don't remember.

4 Q. Okay. But each of those,
5 whether it's an L or a P, that correlates to
6 some type of measurement, performance metric,
7 right?

8 MR. LARSON: Object to form.

10 Object to form.

11 Go ahead, Jillanne.

12 THE WITNESS: Or objective.

13 QUESTIONS BY MS. FITZPATRICK:

14 Q. Okay. Thank you.

15 And we may see so

16 that later on.

16 that later on.

16 that later on.

17 Nov

Now, let's turn the page.

18 Let's go to the next page. All right? And
19 there's all kind of interesting information
20 in here, but I want to start, right, with at
21 the very top, strategic contributions.

22 You see that? You see where I
23 am?

24 A. I do.

Q. All right. We're going to blow

1 that up.

2 All right. Now, this is
3 your -- you've given a 5.5, which is a -- on
4 a 1 to 9 scale, right? You're given 5.5, and
5 your manager's comments, let's take a look at
6 those on your performance factors.

7 It states, "Jillanne works
8 diligently to develop and deliver on key
9 strategic objectives with the framework of
10 compliance."

11 Did I read that correctly?

12 A. You did.

13 Q. And then it says, "Jillanne was
14 thrust into a new role in late last summer,
15 last year, in which in addition to oversight
16 of training, Jillanne assumed the new role of
17 managing and centralizing our compliance
18 efforts across the organization."

19 Did I read that correctly?

20 A. You did.

21 Q. All right. Now, Gina let's
22 scoot back to -- well, let's see. We don't
23 need to go back quite yet. Let's wait one
24 second.

25 You see here -- ma'am, it's not

1 just my words that you were thrust into the
2 new role. That's what your boss said at this
3 time, right?

4 MR. LARSON: Object to form.

5 Go ahead, Jillanne.

6 THE WITNESS: That's what he
7 wrote in this evaluation.

8 QUESTIONS BY MS. FITZPATRICK:

9 Q. Right. And he goes on to
10 say -- and again, this is in 2018. He's
11 talking about you're thrust into this new
12 role, right?

13 He goes on to say that
14 "Jillanne was tasked with centralizing all of
15 pharmacy compliance and specifically focusing
16 on controlled substance reporting and
17 compliance."

18 Do you see that?

19 A. I do.

20 Q. That was a new focus for
21 Publix, right?

22 MR. LARSON: Object to form.

23 Go ahead, Jillanne.

24 THE WITNESS: No, not a new --
25 it was a focus for me, to centralize

1 pharmacy compliance.

2 QUESTIONS BY MS. FITZPATRICK:

3 Q. It was a new job, right?

4 A. Yeah.

5 When you say that was a new
6 focus, can you clarify what you mean?

7 Q. Well, previously Publix didn't
8 have anyone focused on controlled substance
9 reporting and compliance and the
10 centralization of that, did they? That's why
11 it was a new position. It didn't exist
12 before you.

13 A. This was -- I think it's
14 important to clarify that this focus was on
15 centralizing. We had functions in place for
16 sure. They were decentralized. So this was
17 centralizing them. That's what I wanted to
18 clarify.

19 Q. Thank you.

20 And we're going to look at what
21 happened when those functions weren't
22 centralized and why Publix all of the sudden
23 in 2018 realized it really needed to get
24 those functions centralized. Okay? We're
25 going to take a look at that.

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And you also don't know whether
3 or not anyone was reporting them at all,
4 right?

5 MR. LARSON: Same objections.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. You don't know?

8 MR. LARSON: Asked and
9 answered.

10 Go ahead.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. They may or may not have been?

13 A. I can't say that weren't, and I
14 can't say they were. I mean, I don't have a
15 number.

16 Q. Thank you. You can't say they
17 were. Thank you.

18 Next. Prior to 2019, there
19 were no diversion analysts at Publix, right?
20 You agree?

21 A. You're talking about a very
22 specific position, correct? You're talking
23 about a specific position in my area?

24 Q. Yes, ma'am. Diversion analyst.
25 The -- yes, ma'am.

1 A. And I do believe that they --
2 we hired our first ones during 2019. I don't
3 have the exact date. I don't remember that.
4 But it may have been 2018, late -- no, no, it
5 wouldn't have been. 2019.

Q. So prior to 2019 --

7 A. There were none that I know of,
8 no.

9 Q. Okay. And then --

10 A. Sorry, I had to go through the
11 dates.

12 Q. That's okay. No. No. That's
13 okay. I want you to take your time. I want
14 this to be truthful and accurate.

15 And, ma'am, and that's -- in
16 2019, I believe, Publix -- and we may see
17 some of these -- the jury will see some of
18 these documents. But Publix -- by the end of
19 2019, you-all had a total of two diversion
20 analysts, right, for the entire country?

21 A. I think by then -- I'm sorry, I
22 don't remember the timeline. We hired two
23 and then two more, and then Jennifer was
24 technically our first one. I mean, and
25 her title didn't change, you know, until

1 sometime in 2019. So there were five in
2 total.

3 I don't remember the timeline
4 of the hiring, so I...

5 Q. And we can look specifically at
6 some documents that'll give us that. But --
7 and Ms. Warren, the jury will have heard that
8 Ms. Warren -- because you're right. When
9 Ms. Warren started -- that's Jennifer. When
10 she started working as a diversion analyst,
11 she already had a full-time job, right?

12 A. What do you mean, she
13 already -- she --

14 Q. Well, that's not -- that wasn't
15 her -- that wasn't the only thing she did all
16 day, right? She had other responsibilities
17 as part of your compliance team?

18 A. When we -- when we started our
19 work on centralizing and developing that
20 area, her -- she was in a compliance analyst
21 role. I believe that was the official name
22 of the role. And she was -- her priorities
23 were changed and were specifically on all
24 controlled substances work.

25 Q. Right.

1 A. So --

2 Q. But her -- what I'm getting
3 at -- and Ms. Warren has already testified
4 about this. But it wasn't her only job to
5 review -- as a diversion analyst to review
6 these suspicious orders -- excuse me, orders
7 of interest to determine if they were
8 suspicious.

9 She only spent a percentage of
10 her time doing that, right? She had other
11 responsibilities?

12 MR. LARSON: Object to form.

13 Go ahead, Jillanne.

14 THE WITNESS: She probably had
15 some other responsibilities, as we all
16 do when we, you know, have a job. But
17 that was her prime -- one of her
18 primary roles, and she spent a high
19 percentage of time on that.

20 QUESTIONS BY MS. FITZPATRICK:

21 Q. Well, would you defer to
22 Ms. Warren's testimony on that subject, what
23 percentage of time she spent reviewing
24 suspicious orders?

25 MR. LARSON: Same objection.

1 Form.

2 Go ahead.

3 THE WITNESS: Was that a
4 question for me?

5 QUESTIONS BY MS. FITZPATRICK:

6 Q. Yes, ma'am.

7 Would you defer to her
8 testimony about what percentage of her time
9 was spent --

10 A. I'm sorry.

11 Q. -- reviewing orders of
12 interest?

13 A. I don't have a percentage.

14 I --

15 Q. Yes, ma'am. You would defer to
16 her, right?

17 A. Yeah.

18 Q. Okay.

19 And, ma'am, those two, total of
20 two, that for the first time were hired in
21 2019, those were the only two diversion
22 analysts for the whole country, right?

23 A. For the whole country?

24 Q. For Publix, yes, ma'am.

25 A. For Publix, correct.

1 Q. All Publix stores across the
2 country?

3 MR. LARSON: Object to form.

4 THE WITNESS: Right.

5 QUESTIONS BY MS. FITZPATRICK:

6 Q. Okay. And then at some point
7 in 2020 and 2021, a couple more were added,
8 such that today Publix has a grand total of
9 five diversion analysts for all stores across
10 the country.

11 Is that right?

12 MR. LARSON: Objection to form.

13 Go ahead. Sorry. Sorry,
14 Jillanne. Give me a second.

15 Object to form.

16 Go ahead.

17 THE WITNESS: I'm not sure how
18 many we have today.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. What about at the time that
21 you -- as of the time you retired in June?

22 A. Well, remember, they reported
23 to another department for a good amount of
24 time before I retired, so I wasn't really
25 involved. But when they left my area and

1 transitioned to the other area, there were
2 four diversion analysts and a manager --

3 Q. Got it.

4 A. -- for seven states.

5 Q. And that would have been in
6 around 2021, right?

7 A. Yes. The transition was in
8 early -- first quarter 2021.

9 Q. And we already talked about
10 this when we talked about Publix, but Publix
11 owns and operates roughly 1,200 pharmacies
12 around the country, right?

13 A. Yeah.

14 Q. So that's for all 1,200 of
15 those pharmacies?

16 A. Yes.

17 Q. As of 2021, there were four.
18 All right. Next. It took
19 Publix two years to replace the SOMS,
20 suspicious order monitoring system, it knew
21 was not working in 2018.

22 A. Disagree.

23 MR. LARSON: Object to form.

24 QUESTIONS BY MS. FITZPATRICK:

25 Q. Let me rephrase that.

1 of did parallel. You know, we put some
2 stores on the new -- and then we finished the
3 migration, I believe it was in 2020. But,
4 again, I don't recall the exact timeline --

5 Q. Right.

6 A. -- of the transition.

7 Q. It wasn't until 2020 that the
8 full transition had been made from
9 e-SupplyLink SOMS system being talked about
10 here and the one that was being talked about
11 in that memo as not working. Wasn't until
12 2020 till that full transition was made over
13 to OrderInsite, right?

14 MR. LARSON: Object to form.

15 Go ahead, Jillanne.

16 THE WITNESS: Yeah, I feel -- I
17 think it was around 2020. Is that
18 what you're asking me? That's when
19 the transition took place. I think
20 that's correct, it was sometime in
21 2020.

22 QUESTIONS BY MS. FITZPATRICK:

23 Q. Yes, ma'am.

24 Now, in addition to this
25 failure, I want to also -- ma'am, you recall

1 implementation of two new applications and
2 extensive changes to the pharmacy ordering
3 process. The two new applications for C-II
4 drugs include a controlled substance ordering
5 system and a suspicious order monitoring
6 system."

7 Do you see that?

8 A. No, I do see that, uh-huh.

9 Q. That's what they're talking
10 about here, suspicious order monitoring. And
11 they talk about the fact that they've
12 identified a startup company, OrderInsite.

13 Do you see that?

14 A. I see that, uh-huh.

15 Q. And they say it "has a
16 potential to improve the supply chain;
17 however, initial analysis indicates that the
18 software is extremely immature and has a low
19 likelihood for success."

20 Do you see that?

21 A. Yes.

22 Q. And OrderInsite is a SOMS
23 system that Publix moved to in 2020 with some
24 pilot stores before that in 2018. That's
25 what they moved to and still use today,

1 right?

2 MR. LARSON: Object to form.

3 Go ahead.

4 THE WITNESS: I believe we're
5 still using it today.

6 And I was just saying that this
7 was from 2016. So several years
8 later, apparently, is when it was
9 decided to move to the OrderInsite
10 SOMS.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. That's right, ma'am. Despite
13 knowing since 2016 that it had a low
14 likelihood for success, that's the system
15 Publix went with, isn't it?

16 MR. LARSON: Object to form.

17 Go ahead, Jillanne.

18 THE WITNESS: I mean, that was
19 an opinion back in 2016.

20 QUESTIONS BY MS. FITZPATRICK:

21 Q. All right. An opinion held by
22 Katenkamp and Fred Ottolino, who was as high
23 as it gets when it comes to pharmacy, right?
24 VP of the pharmacy, Fred Ottolino.

25 MR. LARSON: Object to form.

1 there's several things that come into play
2 there.

3 Q. And --

4 A. That's -- yeah.

5 Q. I'm so sorry. Go ahead.

6 A. No, go ahead.

7 Q. Publix -- unless there's a
8 state law requiring it, Publix does not
9 require its pharmacists to check PDMPs before
10 dispensing opioids, does it?

11 A. It's -- we follow what the
12 state requirements are. Or we did when I was
13 there.

14 Q. Right.

15 So does that mean the answer to
16 my question is yes? Unless a state law
17 requires pharmacists to check a PDMP before
18 dispensing a controlled substance, Publix
19 does not require its pharmacists to check the
20 PDMP?

21 A. That would be correct.

22 MR. LARSON: Object to form.

23 Go ahead.

24 Just give me a second,
25 Jillanne.